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[redacted]

April 7, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M St., N.W.
Washington, D.C. 20054

Re: Petitions of Bell Atlantic, US WEST and Ameritech
Pursuant to Section 706; CC Docket Nos. 98-11, 98-26, 98-36

Dear Ms Salas:

ALTS respectfully requests that the enclosed comments be accepted for filing one date late. ALTS' word processing program misfunctioned during the finalization of this filing, and the recovery of lost data prevented ALTS from reaching the Secretary's office before it closed at 5:30 pm, even though service copies for petitioners and ITS, as well as courtesy copies for staff, were each properly served and lodged. Acceptance of these comments one day late will not prejudice any party. ALTS apologizes for its computer difficulty, and respectfully asks that its filing be accepted.

Yours truly,

Richard J. Metzger

cc: all parties on service list

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List A B C D E

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-11
	)	
Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services	)	CC Docket No. 98-26
	)	
Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Capability	)	CC Docket No. 98-36

OPPOSITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

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April 6, 1998

SUMMARY

The section 706 petitions filed by Bell Atlantic, U S WEST, and Ameritech are among the most unmeritorious requests ever presented to this Commission. None of these RBOCs has opened up its local markets to competition sufficiently to merit section 271 approval in any state, yet they are now asking the Commission to set aside the cornerstone legislative protections of local competition -- sections 251(c) and 271 -- as they apply to "advanced data services" because these sections assertedly deter RBOC investment.

The facts demonstrate this is pure cyber-snake oil. Each RBOC has monopoly control over dial-up access to the Internet within its service territory. Furthermore, there is no section 251(c) or 271 obligations outside those service territories, yet none of these RBOCs has responded by making any appreciable out-of-region investment in data facilities.[1]

The section 706 petitions also lack any legal foundation for several reasons. First, Commission forbearance of either section

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[1] U S WEST's implication that it is currently making such out-of-region investment (U S WEST Petition at 3) is contradicted by its own statements elsewhere that its agreement with Qwest permits: "US WEST to acquire transport backbone through a variable 'pay-as-you-go' cost structure without having to commit a significant up-front investment, which fits with U S WEST's previously expressed investment strategy." US WEST Press Release dated Feb. 17, 1998.

251(c) or 271 is expressly prohibited by section 10 of the Telecommunications Act, which contains the general grant of forbearance power to the Commission and thus clearly controls any use of forbearance under section 706. Second, even if section 706 could be used to forbear from enforcing sections 251(c) and 271, this could only be done upon a finding that it comports with the public interest and promotes competition. Obviously, gutting these provisions while the RBOCs retain monopoly control over in-region dial-up Internet access, and also failing to comply with section 271, would be inconsistent with section 706 on its own terms. Third, the policy issues raised by the RBOCs concerning their participation in data services is already implicated in the remand from the Ninth Circuit concerning Computer III, and cannot be treated separately here.

While these particular petitions are manifestly unfounded, ALTS does recognize that properly targeted requests for relief under section 706 -- perhaps removal of end user rate regulation upon the demonstration of adequate competition, or forbearance from tariffing requirements -- might make sense. But the current petitions merit nothing more than an immediate and resounding rejection.

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OPPOSITION OF THE ASSOCIATION FOR LOCAL TELECOMMUNICATIONS SERVICES

I. INTRODUCTION

Pursuant to the Public Notices released January 30, 1998 (DA 98-184) and March 16, 1998 (DA 98-513), the Association for Local Telecommunications Services ("ALTS") hereby files this opposition to Bell Atlantic, U S WEST, and Ameritech's petitions for "Relief from Barriers to Deployment of Advanced Telecommunications Services" pursuant to section 706(a) of the Telecommunications Act of 1996.[2]

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[2] The March 16th Order consolidated these proceedings for comments and replies concerning all common issues. ALTS respectfully submits that while certain issues are raised only in some petitions, those issues are common to all the RBOCs. For (continued...)

The three petitions are styled slightly differently and the relief requested is not identical.[3] However, there is a commonality in the petitions: all three RBOCs seek to provide certain high speed data communications across LATA boundaries without complying with the requirements of Section 271. Second, the RBOCs seek to provide such services without complying with the Section 251 (c) requirements relating to unbundling and resale. For the following reasons the Commission cannot and should not grant the petitions.

II. SECTION 10 OF THE TELECOMMUNICATIONS ACT FLATLY PROHIBITS ANY FORBEARANCE FROM ENFORCEMENT OF SECTIONS 251(c) AND 271.

The RBOC petitions rely primarily upon section 706 of the Act to support their claims that the Commission has the authority to refrain from applying any of the requirements of sections

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[2](...continued)
example, U S WEST repeatedly refers to the needs of rural end users, but does not limit its requested relief to rural areas, or distinguish between rural areas in U S WEST territory and rural areas in Bell Atlantic or Ameritech territory. Similarly, only Ameritech raises an issue about section 251(h), but the logic of Ameritech's argument would apply equally to Bell Atlantic and US WEST as well. Accordingly, ALTS is filing these comments in each docket.

[3] The Bell Atlantic petition is broader, for example than the U S West petition. It appears that the Bell Atlantic petition, while not very specific or clear, seeks to have the Commission forebear from any regulation of high speed broadband services. While there may be aspects of these requests that have merit -- elimination of depreciation rules, accounting requirements, or removal of end user rate regulation, ALTS limits its comments in this proceeding primarily to the section 251(c) and 271 requests of the RBOCs.

251(c) and 271, the core pro-competitive provisions of the Act, to either Internet backbone services or Internet connectivity. The RBOCs' claim that sections 251(c) and 271 can be negated simply by invoking section 706 is ludicrous given that section 10 of the Act expressly limits the Commission's forbearance authority to prohibit the Commission from forbearing to enforce sections 251(c) or 271:

> " ... the Commission may not forbear from applying the requirements of section 251(c) or 271 under subsection (a) of this section [creating the Commission's "Regulatory Flexibility" power] until it determines that those requirements have been fully implemented."

This explicit limitation of "forbearance" in the statutory provision creating the Commission's general forbearance authority clearly controls the same term when it is used in a more specific instance, as it is in section 706. The only way the Telecommunications Act can be interpreted as a whole is make the meaning of "forbearance" in section 706 consistent with the more general definition and limitation of the same term as used in section 10.[4]

The RBOCs have no response to section 10(c), except to

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[4] Boise Cascade Corp. v. EPA, 942 F.2d 1427, 1432 (9th Cir. 1991)(reviewing courts "must interpret statutes as a whole, giving effect to each word and making every effort not to interpret a provision in a manner that renders other provisions of the same statute inconsistent, meaningless or superfluous." See also Mountain States Tele. and Tele. Co. v. Pueblo of Santa Ana, 472 U.S. 237, 249 (1985); United States v. Menasche, 348 U.S. 528, 538-39 (1955).

invoke the maxim of "expressio unius est exclusio alterius" by claiming that Congress' failure to repeat its definition of "forbearance" in section 706 empowers the Commission to forbear from enforcing sections 251(c) or 271 under section 706.[5]

This is complete nonsense. The RBOCs' reading of section 706 would mean, for example, that the Commission could alter the carefully crafted carrot and stick of the section 271 checklist simply by citing to section 706 despite the statute's express prohibition on checklist alteration.[6] The courts have uniformly rejected such absurd applications of the expressio maxim.[7]

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[5] See, e.g., Bell Atlantic Petition at 10 (the section 10 proviso: "is an exception only to the Commission's forbearance authority under Section 10(a)"); U S WEST Petition at 36 n.15 ("By contrast [with section 10], the more targeted grant of forbearance authority in Section 706 contains no such limitation"); and Ameritech Petition at 14 n.23 ("Section 706(a), however, represents an independent grant of forbearance authority that is not so limited"). But see Petition of the Alliance for Public Technology, Requesting Issuance of an NOI and NPRM to Implement Section 706 (filed Feb. 18, 1998) at 21: (" ... the Commission has the authority to forbear enforcing Sections 251(c) and 271 only after their full implementation ...").

[6] See section 271(d)(4): "The Commission may not, by rule or otherwise, limit or extend the terms used in the competitive checklist set forth in subsection (c)(2)(B)."

[7] National Petroleum Refiners Ass'n v. FTC, 482 F.2d 672, 676 (D.C. Cir. 1973). See also Herman & MacLean v. Huddleston, 459 U.S. 375, 387 n. 23 (1983)(rejecting expressio because "such canons 'long have been subordinated to the doctrine that courts will construe the details of an act in conformity with its dominating general purpose'"); Matter of American Reserve Corp., 840 F.2d 287,492 (7th Cir. 1988)("Why should we infer from the list of ways to do something that there are no others? The legislature does not tie up every knot in every statutory subsection"); Director v. Bethlehem Mines Corp., 669 F.2d 187, 197 (4th Cir. 1982)("maxim is to be applied with great caution

(continued...)

Indeed, the Commission has already acknowledged that forbearance of section 271 is squarely controlled by section 10. In Petition for Declaratory Ruling Regarding U S WEST Petitions to Consolidate LATAs in Minnesota and Arizona ("Minnesota LATA Order"), Order released April 21, 1997, NSD-L-97-6, the Commission rejected U S WEST's effort to remove all LATA borders within a state as improper until such time as U S WEST had entirely satisfied the requirements of Section 271,[8] holding that: "The section 10(d) requirement means that the Commission must ensure that all the requirements of section 271 are implemented before a BOC may offer interLATA service" (at ¶ 25).[9] By recognizing that section 10(d) controls any effort to forbear from enforcing or otherwise circumvent the requirements of section 271, the Minnesota LATA Order clearly bars the RBOCs from seeking any section 706 forbearance of sections 271 or 251(c).

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[7](...continued)
and is recognized as unreliable").

[8] Under section 271 the Regional Bell Operating Companies may not provide any interLATA services except upon the filing and the grant of a section 271 application for each state. "Any services" obviously includes "high speed broadband services", regardless of how those are defined. The only exceptions are for "out of region services" and "incidental services."

[9] The Minnesota LATA Order also rejected an argument raised here by Bell Atlantic that section 3(25)(B), which permits the Commission to approve modifications of a LATA boundary, "encompasses the power to modify Bell Atlantic's LATAs for the defined purpose of encouraging the speedier development of high-speed broadband and packet-switched data service capability." (Bell Atlantic Petition at 12.)

III. THE RBOCS HAVE FAILED TO MAKE A SHOWING FOR SECTION 706 FORBEARANCE EVEN IF SECTION 706 COULD BE APPLIED TO SECTIONS 271 OR 251(C).

Beyond section 10's flat prohibition on forbearance from enforcement of sections 271 and 251(c), the RBOC petitions fail to show even facial compliance with the requirements of section 706:

> "The Commission and each State commission with regulatory jurisdiction over telecommunications services shall encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans (including, and in particular, elementary and secondary schools and classrooms) by utilizing, in a manner consistent with the public interest, convenience and necessity, price cap regulation, regulatory forbearance, measures that promote competition in the local telecommunications market, or other regulating methods that remove barriers to infrastructure investment." (Emphasis supplied.)

While section 706 allows the Commission and state PSCs to forbear from regulating certain services or facilities investment when forbearance will encourage deployment on a reasonable and timely basis, there remain three very important caveats in section 706: (1) protection of the public interest, convenience and necessity; (2) protection of competition in local markets; and (3) actual removal of barriers to infrastructure investment. As shown below, there are several reasons why the RBOC petitions are not consistent with the public interest or promotion of local competition (the third caveat, removal of actual barriers, is addressed in Part III, infra).

A. The Commission Has Already Determined that Competitive Provisioning of Advanced Data Services -- Not Monopoly Provisioning -- Will Best Serve the Public Interest.

Stripped of their high-tech packaging and legal rhetoric, the RBOCs' request for relief from section 251(c) boils down to a simple plea that they be allowed to provide "advanced data services" without having to worry about such meddlesome details as competitors. Absent any new entrants, with their nasty habits of price discounting and product innovation, the RBOCs would have a clearer, more remunerative environment in which to roll out their new data products. In short, the RBOCs want to return to the bad old days of yesteryear by having the Commission look to monopoly provisioning as the model for RBOC involvement in advanced data services.

It is possible the Commission has never seen a proposal so inconsistent with the Commission's fundamental regulatory mission. Chairman Kennard recently emphasized the link -- and not the discontinuity -- that exists between competition and digital technology in his testimony to the Senate on March 19, 1998:

> " ... I think I speak for all of us at the FCC in saying that we feel privileged to be working at the Commission at this important time in the history of communications law and policy. When the history of communications policy in this decade is written, I believe it will largely be about two transforming events: the move to embrace competition as an organizing principle in the law and the conversion from analog to digital technology .... First and foremost, there

> is competition. Competition has been a goal of communication policy makers for many years. With the 1996 Act, it has become our national policy and the organizing force of much of our work. The 1996 Act gives us the tools to accelerate the pace of competition and, with your support and sufficient resources, I am confident we will." (Emphasis supplied.)

Simple common sense suggests the absurdity of adopting monopoly provisioning for advanced data services. The Bell System took years just to decide to offer telephones in a few simple colors. Innovation would suffer a hammer blow if the ILECs gained a market stranglehold on advanced data services.

Of course, the RBOCs are not openly demanding that they be handed a monopoly (though this is the only label that properly fits their requests for forbearance from sections 251(c) and section 271). Instead, they base their requests on their perceived need for "appropriate returns" (i.e, more money), and market predictability, while hinting darkly that Internet speeds will slowly grind to a halt unless they get what they want.

But the claim that the RBOCs will not make any investments unless they are granted supercompetitive profits has already been made in the Local Competition proceeding,[10] and was expressly

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[10] In re Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499 (1996) at ¶ 638: " .... incumbent LECs argue that setting prices based on the forward-looking economic cost of the element ... will discourage efficient entry and useful investment by both incumbent local exchange carrier and their competitors."

rejected there by the Commission.[11] Indeed, the Commission expressly acknowledged the authority of the states to calculate UNE prices using a risk-adjusted cost of capital reflecting particular business risks (id. at ¶ 702):

> "We recognize that incumbent LECs are likely to face increased risks given the overall increases in competition in this industry, which generally might warrant an increased cost of capital, but note that, earlier this year, we instituted a preliminary inquiry as to whether the currently authorized federal 11.25 percent rate of return is too high given the current marketplace cost of equity and debt .... States may adjust the cost of capital if a party demonstrates to a state commission that either a higher or lower level of cost of capital is warranted .... We note that the risk-adjusted cost of capital need not be uniform for all elements."

In short, if the RBOCs really need a higher return in order to recover their opportunity costs, and thereby have an economic incentive to make investments in the particular UNEs that CLECs use to provision advanced data services (or any other kind of services), they are free to seek those higher returns from the states. If, on the other hand, they want to disable section 251(c) in order to earn supracompetitive profits from their advanced data services (i.e., profits higher than their opportunity costs), the Commission has already determined they need only earn their opportunity costs of capital -- and not

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[11] Id. at ¶ 697: " ... the cost-based pricing methodology that we are adopting is designed to permit incumbent LECs to recover their economic costs of providing interconnection and unbundled element, which may minimize the economic impact of our decisions on incumbent LECs ...."

monopoly returns.[12] The RBOCs thus seek either a remedy which is available from the states, or else are requesting an untimely petition for reconsideration on the cost of capital issue. More simply, the RBOCs are seeking to return to monopoly provisioning in the context of advanced data services.

* * *

Again, ALTS does not take a position in this proceeding on the streamlining of depreciation schedules, accounting requirements, or altering end user rate regulation as they might apply to advanced data services. But ALTS objects emphatically to any reintroduction of monopoly provisioning for advanced data services via Commission forbearance from enforcement of sections 251(c) or 271.

B. The Commission Has Already Ruled that the Public Interest, as Well as Competition in Local Markets, Requires RBOCs to Provide Competitors Access to Unbundled Network Elements Used in the Provisioning of Advanced Data Services.

The Commission has by rulemaking proceeding already defined the unbundled network elements that must be provided by incumbent carriers (see the discussion in the Streamlined Information Services FNPRM at ¶¶ 30-31). The high speed broadband local access that Bell Atlantic and other RBOCs seek to exempt from any unbundling requirement clearly comes under the Commission's

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[12] Id. at ¶ 699: "We find that the TELRIC pricing methodology we are adopting provides for such a reasonable profit and thus no additional profit is justified ...."

current definition of what must be offered as an unbundled element. In the Local Competition Order the Commission explained that the unbundled loop definition "includes, for example, two-wire and four-wire analog voice-grade loops, and two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals" (footnote omitted).[13] Thus, the RBOCs' section 706 petitions are simply poorly concealed petitions for reconsideration of the portion of the Local Competition Order which defines the UNEs available for unbundling.

C. The Commission Has Already Determined that States Should Have the Authority to Determine Whether Additional UNEs (Including UNEs Needed for Provisioning of Advanced Data Services) Should Be Made Available.

Even if the ILECs high speed broadband services did not come under the definition of unbundled elements contained in Section 51.319 of the Commission's Local Competition rules, the rules set forth the procedures that must be followed in determining when additional elements must be made available. Under section 51.317, any element that a carrier wishes to obtain as an unbundled network element must be made available, except

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[13] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd, 15499 ¶ 380 (1996)(footnote omitted). In addition Section 51.319(c) -- the Local Switching Capability -- specifically includes the "line -side facilities [including] the switch line care." It is the switch line card that enables carriers to provide the newer high speed services over older loops.

under very limited circumstances, if a state commission decides that it is technically feasible to provide such element. Clearly, under section 51.317 it is the states (not the Commission) that make a determination in the first instance as to whether additional elements should be made available.

The Commission may, of course, change its rules after adequate notice and comment, or it can waive one of its rules if the special circumstances warranting a waiver are present. Because the requirements for a waiver of the Commission's rules have not been met in this case,[14] and there has been no rulemaking proceeding, the Commission may not grant the RBOCs' request.

IV. THE DEREGULATION SOUGHT BY THE RBOCs WOULD HAVE NO EFFECT ON INTERNET INFRASTRUCTURE INVESTMENT.

The RBOCs complain loudly in their petition about current data speeds over the Internet, citing problems that range from residential customers' difficulty in acquiring 56 kbits/sec modem access from some ISP providers, to Boston University's need for 155 Mbits/sec Internet access for its Cray supercomputer. After listing these various problems, for example, Bell Atlantic asserts they are caused by a lack of investment in the Internet, and concludes this lack of investment would be cured by removing

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[14] Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (citing WAIT Radio v. FCC, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

the Commission's regulation of RBOCs' involvement with the Internet.

Unfortunately, one critical matter is missing from these lengthy and technology-favored petitions -- any logical linkage between the Commission's regulation of the RBOCs' Internet services and Internet data speeds. The intellectual poverty of these petitions is best revealed by separating their requests into two separate parts: (1) the provisioning of access to the Internet over public switched network facilities such as those owned by the RBOCs in their own regions ("Internet connectivity"); and, (2) the provisioning of backbone Internet facilities ("Internet backbone").[15]

A. Federal Regulation Has No Effect on Internet Investment.

Internet Connectivity -- The petitions fail to specify the particular Internet connectivity problems that would assertedly be cured through Commission deregulation (for example, some issues are listed that plainly have nothing to do with the Commission or the RBOCs -- ISPs lacking sufficient number of high-speed modem connections, for example, or the absence of final specifications for high-speed modem). However, the

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[15] See Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper Series, March 1997, at 52: "Two types on Internet congestion should be distinguished: congestion of the Internet backbone, and congestion of the public switched telephone network when used to access the Internet."

petitions generally claim that xDSL and similar technologies will not develop unless it receives Commission deregulation. This assertion is factually deficient in numerous respects:

- End user rates for xDSL, ADSL, HDSL, and similar end user services are set by the states (just like ISDN rates), and not by the Commission.

- The wholesale rates for xDSL, ADSL, HDSL, and similar services (whether purchased either as unbundled network elements ("UNEs") or as resold services) are set by the states, not by the Commission. Indeed, it was the RBOCs and the other ILECs that pushed to divest the Commission of this power, and that continue to defend the states' authority before the United States Supreme Court.[16]

- Even if the Supreme Court ultimately does conclude that pricing of UNEs falls within the jurisdiction of the Commission, the fundamental premise of the Commission's forward-looking UNE costing rules is to preserve economically-rational investment incentives, whether or not that investment happens to be in mature or in cutting edge technology.[17]

- If Bell Atlantic were correct about the deterring effect of Commission regulation, how was it able to invest in ISDN?[18] How did it justify its New Jersey "high speed network"?[19]

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[16] See Bell Atlantic's Opposition to Petitions for a Writ of Certiorari filed December 18, 1997 (No. 97-826), at 13: "Congress itself enacted the governing 'Pricing Standards' in section 252(d)(1) and assigned to State commissions the task of 'establish[ing] and 'determin[ing]' 'just and reasonable rates' consistent with those standards."

[17] See, e.g., Local Competition Order at ¶¶ 699, 738: " ... we are establishing pricing elements and services that approximate what the incumbent LECs would be able to charge if there were a competitive market for such offerings."

[18] Bell Atlantic proudly claims in its Petition that 90% of its customers can obtain ISDN service.

[19] "Most of the world will have to wait for a while for the (continued...)

- Why will Commission deregulation stimulate U S WEST's infrastructure investment when U S WEST currently touts the manner in which its current data transport deals permit: "US WEST to acquire transport backbone through a variable 'pay-as-you-go' cost structure without having to commit a significant up-front investment, which fits with U S WEST's previously expressed investment strategy."[20] (Emphasis supplied.)

- Several RBOCs, including Bell Atlantic, already have vigorous ADSL development projects underway, including a recent joint venture involving all the RBOCs, Microsoft, and Intel (each of the latter two companies being dominant within two of the most concentrated industry sectors in America).[21]

- ALTS has examined RBOC statements outside of these petitions relevant to their investment decisions. Nowhere in any of these financial or market statements could ALTS find any statement that RBOC investments in xDSL technology cannot result in commercially viable products without regulatory relief from the Commission.

There is no need here to list all the factual and logical defects in Petitioners' claims concerning Internet connectivity. What is apparent is that their real goal is not the ability to

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[19](...continued)
beginning of the 21st century. But the future already has arrived for New Jersey's schools and public libraries.
"Bell Atlantic's high-speed Access New Jersey(SM) network is up and running, with four asynchronous transfer mode (ATM) switches that can transmit voice, video and data at seeds in excess of 45 megabits per second to schools and public libraries across the state." Bell Atlantic news release dated February 20, 1998.

[20] U S WEST Press Release dated February 17, 1998.

[21] Bell Atlantic's press release of January 26, 1998, describing this joint venture speaks glowingly of how: "Once approved, the rapid deployment of a single standard will increase the installed based of consumers accessing this service, thereby lowering costs of high-speed Internet products." Nowhere in its release does Bell Atlantic condition its optimistic ADSL predictions upon Commission deregulation.

earn a return sufficient to justify an investment, but rather the opportunity to earn supra-competitive earnings similar to those enjoyed by their new partners. The Commission should reject this blatant attempt to replicate the current PC cartel in the Internet connectivity market.

Internet Backbone -- Petitioners are equally unjustified in seeking Commission deregulation concerning their role in Internet backbone facilities, but for reasons that turn on a critical difference between the network architecture of the Internet backbone compared to the public long distance network.

Within the PSN network, POP-to-POP circuits are almost always physically provisioned over a single IXC's facilities. This single-carrier provisioning (which is true even where resellers provide the end user service) enables a facilities-based IXC to make its own unilateral economic choices about the amount of bandwidth it wishes to offer. Thus, an IXC can choose to offer increased bandwidth simply by undertaking the necessary investment in facilities.

Because the Internet use a different network architecture, bandwidth over the Internet backbone cannot be easily changed by one provider's unilateral investment decision. Unlike the public network, the Internet backbone utilizes a multi-provider routing paradigm under which routing decisions can be made on a packet-

by-packet basis, rather than a call-by-call basis.[22] While this architecture has many virtues (such as better accommodating the bursty nature of data communications, providing network redundancy, and achieving higher overall throughput), it necessarily means that Internet backbone speed is a collective issue that can only be driven by joint decisions and investment among backbone providers. This point was recently made by Dr. John Gibbons, Special Assistant to the President on Science and Technology (New York Times of September 11, 1997):

> "[Dr. Gibbons] said that like the U.S. Government-financed partnerships that helped build the original Internet, Next Generation Internet is needed 'because today's Internet is already being challenged by ever increasing demand for high bandwidth access and multimedia applications. The solutions to these challenges are beyond the scope of any one institution, company, or industry - and indeed, in some cases, beyond the scope of our current technical knowledge'" (emphasis supplied).[23]

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[22] See Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper Series, March 1997, at 17: "A packet-switched network means that data transmitted over the network is split up into small chunks, or 'packets.' Unlike 'circuit-switched' networks such as the public switched telephone network (PSTN), a packet-switched network is 'connectionless.' In other words, a dedicated end-to-end transmission path does (or circuit) not need to be opened for each transmission." (Emphasis in original; footnotes omitted.)

[23] A similar conclusion is reached in Digital Tornado: The Internet and Telecommunications Policy, OPP Working Paper Series, March 1997, at 53:

> "Congestion of the Internet backbones results largely from the shared, decentralized nature of the Internet. Because the Internet interconnects thousands of different networks, each of which only controls the traffic passing over its own portion of the network, there is no centralized mechanism to ensure that usage at one point on the network

(continued...)

In short, the issue of Internet backbone speeds is a common issue currently being resolved at the highest levels of government[24] and research[25] -- and any problems that exist are not the result of Commission regulation. Plainly, granting the RBOCs' petitions would have little or no effect on Internet backbone speeds.

B. RBOCs Are Not Needed to Insure Adequate Internet Investment.

Even if the current inadequacies of the Internet were solely a matter of investment, and not determined by issues of network architecture and technology (contrary to the views of the Administration described above), there is no reason why these investment needs could only be met by regulated telephone companies. Indeed, there is no evidence of any difficulty in

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[23](...continued)
does not create congestion at another point."

[24] The Next Generation Internet is a Federal government initiative linked to the academic community through Internet2 (see below), which: "will create the foundation for the networks of the 21st century, setting the stage for networks that are much more powerful and versatile than the current Internet." NGI Implementation Plan, released February 1998, at 1. Nowhere in NGI's seventy page plan and timetables for implementing the next generation Internet is there any mention of, or reference to, Commission regulation as a problem.

[25] Internet2 is a coalition of research universities working with NGI on next generation Internet. Documentation from Internet2 discusses current Internet congestion at great length and detail, including its own plans for curing the various problems, without ever mentioning the exclusion of RBOCs from the provision of in-region Internet backbone as a problem (see, e.g., http://www.internet2.edu/html/general_faq.html#).

raising funding for advanced telecommunications facilities once they become operationally viable. Companies like Qwest[26] and Level3[27] are pouring billions of dollars into construction of advanced TCP/IP networks, and AT&T recently announced its own plans to expand its Internet facilities.

C. Experience Demonstrates that few RBOCs Would Invest in Internet Facilities Even if They Were Freed from Regulation.

Experience demonstrates that relief from in-region interLATA restrictions would have little effect on an RBOC's willingness to invest in such facilities. Out-of-region RBOCs such as Ameritech are free today to plow their hundreds of millions of dollars of annual free cash flow into Internet facilities without appreciable regulatory impediments. Instead, it chose to purchase the Danish landline provider. Nor has Bell Atlantic itself invested one thin dime in out-of-region Internet facilities. And, although U S West has claimed to be making out of region investments in high speed data facilities, its

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[26] "U S WEST also said last week that it's buying 16,000 fiber-optic miles from carrier Qwest Communications to help build a nationwide IP network by 1999" (Information Week, February 24, 1998); "Qwest won $70-million contract from Intertel, New Brunswick, N.J., to provide telecom services over its fiber network between U.S. and U.K., using multiple DS-3 circuits across Atlantic" (Communications Daily, February 19, 1998).

[27] "Armed with nearly $3 billion in financing, former executives of carrier MFS Communications and its original holding company are reuniting to create the first business-focused, pure Internet Protocol (IP), local and long-distance carrier - and to break the economic and technology mold" (Information Week, January 19, 1998).